

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

DEC 13 2005

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

SILVIA RAMOS-PLIEGO,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-74661

Agency No. A79-289-828

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted December 5, 2005**

Before: GOODWIN, TASHIMA, and FISHER, Circuit Judges.

Silvia Ramos-Pliego, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' order dismissing her appeal from an immigration judge's ("IJ") order denying her application for cancellation of

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

removal. We review for abuse of discretion the denial of a request for a continuance. *See Baires v. INS*, 856 F.2d 89, 91 (9th Cir. 1988). We deny the petition for review.

The agency did not abuse its discretion when it denied Ramos-Pliego's request for a continuance because the record shows that not only did Ramos-Pliego have over twelve months after the initial hearing to procure a psychological evaluation to supplement her claim of hardship, she was also granted a thirty-day extension after the merits hearing to obtain that evidence. *See Baires*, 856 F.2d at 91 (the denial of a continuance is a question which "must be resolved on a case by case basis according to the facts and circumstances of each case"). Ramos-Pliego's subsequent failure to submit a psychological evaluation or to make a showing that she had attempted to get one during this thirty-day period, as well as her inability to provide any evidence that her children suffered from any physical or mental health problems, undercuts her claim that her due process rights were violated. *See Perez-Lastor v. INS*, 208 F.3d 773, 777 (9th Cir. 2000) (requiring that an alien show prejudice to establish a due process claim).

The voluntary departure period was stayed, and that stay will expire upon issuance of the mandate. *See Desta v. Ashcroft*, 365 F.3d 741 (9th Cir. 2004).

PETITION FOR REVIEW DENIED.